IN THE HIGH COURT OF UTTARAKHAND AT NAINITAL

Writ Petition No. 115 of 2007 (M/B)

Dr. Krishna Chube s/o late Sri Pandev Chaube,
R/o Village Kharakpur, Post Office, Mota Haldu,
Tehsil Lalkuan, District Nainital …… Petitioner

Versus

1. State of Uttaranchal through Secretary,
   Department of Environment and Forest,
   Government of Uttaranchal, Dehradun.
2. Secretary, Mining Department,
   Government of Uttaranchal, Dehradun.
3. Secretary, Irrigation Department,
   Government of Uttaranchal, Dehradun.
4. Secretary, Uttarnachal Environment Protection
   and Pollution Control Board,
   E-115, Nehru Colony, Dehradun.
5. Regional Office, Uttaranchal Environment Protection
   and Pollution Control Board,
   Avas Vikas Colony, Haldwani, District Nainital.
6. District Magistrate, Nainital.
7. Sri Vinod Kumar Joshi s/o Sri Pitamber Dutt,
   Proprietor M/s Vinod Stone Products, Village Bakulia,
   Post Office Mota Haldu, Tehsil Lalkuan,
   District Nainital. …… Respondents

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Sri Manoj Tiwari, Advocate for the petitioner.
Sri Subhash Upadhyaya, Brief Holder for respondents 1,2,3 and 6.
Sri Sudhir Kumar, Advocate for respondents 4 and 5.
None for respondent no. 7.

JUDGMENT

Coram: Hon'ble Rajeev Gupta, C.J.
Hon'ble J.C.S.Rawat, J.

RAJEEV GUPTA, C. J. (Oral)

Sri Manoj Tiwari, Advocate for the petitioner.

Sri Subhash Upadhyaya, Brief Holder for respondents 1,2,3 and 6.

Sri Sudhir Kumar, Advocate for respondents 4 and 5.

None for respondent no. 7.

They are heard.

2. Petitioner Daya Krishna Chaube has filed this writ petition for the following reliefs:

> "A. To issue a writ, order or direction in the nature of certiorari for quashing the impugned order dated 2.3.2006 passed by respondent no.6 and also the no objection certificate dated 4.5.2006 issued by respondent no.4(Annexure no. 9 and 10 respectively to the writ petition).
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> B. To issue a writ, order or direction in the nature of mandamus Commanding the respondent no. 4 to constitute a Committee for making spot inspection of the site where the respondent no.7 is establishing his Unit and to take appropriate action against the erring officers who submitted incorrect report which led to grant of no objection certificate to respondent no. 7.
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> C. To issue a writ, order or direction in the nature of mandamus commanding the respondent no. 6 to hold an enquiry as regards the manner in which the material on record including the letter dated 23.05.2005 which was issued by his office to Lokayukt, Uttaranchal was not brought to his notice while passing the impugned order dated 2.3.2006.
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> D. To issue any other writ, order or direction which this Hon'ble Court any deem fit and proper in the circumstances of the case.
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> E. Award the cost of the writ petition in favour of the petitioner.

3. Sri Sudhir Kumar, the learned counsel for respondents 4 and 5 has raised a preliminary objection about the maintainability of the writ petition on the ground that the petitioner has an alternative remedy of filing a statutory appeal against the impugned order dated 04.05.2006(Annexure 10) which is based on the order dated 02.03.2006 (Annexure 9).

4. Sri Manoj Tiwari, the learned counsel for the petitioner could not demonstrate as to how the alternative remedy of filing an appeal against the order Annexure 10 is not efficacious in the present case.

5. In this view of the matter, we decline to exercise our discretionary jurisdiction under Article 226 of the Constitution of India.

6. The writ petition, therefore, is liable to be dismissed.

7. The writ petition, therefore, is dismissed with the liberty to the petitioner to avail the alternative remedy of filing statutory appeal against the order Annexure 10.

8. With the above order, I.A. No. 693 of 2007 also stands disposed of.

(J.C.S. Rawat, J.) 03.05.2007

(Rajeev Gupta, C.J.) 03.05.2007

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